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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,468	11/08/2001	Marvin Lewis JR.	18622.007	4368
21878	7590	01/02/2004	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP			BOYD, JENNIFER A	
214 N. TRYON STREET			ART UNIT	PAPER NUMBER
HEARST TOWER, 47TH FLOOR			1771	
CHARLOTTE, NC 28202				

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/010,468	<b>Applicant(s)</b> LEWIS, MARVIN
	<b>Examiner</b> Jennifer A Boyd	<b>Art Unit</b> 1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 September 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### *Response to Amendment*

1. The Applicant's Amendments and Accompanying Remarks, filed 9/17/03, have been entered and have been carefully considered. Claim 1 is amended, claim 8 is cancelled and claims 1 – 7 are pending. In light of Applicant's Arguments, the Examiner withdraws the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection of claims 1 - 7 as set forth in paragraphs 2 - 6 of the Office Action dated 5/21/03. In light of Applicant's Arguments, the Examiner withdraws the 35 U.S.C. 102(b) Rejection as being anticipated by Matsumoto (EP 808950 A1) as detailed in paragraphs 7 – 8 of the Office Action dated 5/21/03. However, after an updated search, the invention as currently claimed is not found to be patentable for reasons herein below.

### *Claim Rejections - 35 USC § 102*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1 – 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Deignan et al. (US 5,768,758).

Deignan is directed to a method and apparatus for attachment of upholstery to seats (Title) or other items of furnishing (column 10, lines 15 – 20). As to claim 1, Deignan teaches a narrow tape or web with a cord secured to the edges of a piece of upholstery (column 1, lines 65 – 68). Deignan teaches that the narrow tape or web can be knitted (column 2, lines 17 – 20). Deignan teaches a web, equated to Applicant's "fabric band", which is warp knitted on a crochet knitting machine comprising warp knitting yarns 98 and

filling yarns 100 (column 4, lines 37 – 53). Deignan teaches that the web, or “fabric band”, is folded over onto itself and stitched together (see Figure 12 and column 7, lines 65 – 68). The Examiner equates the two layers that are formed by folding the web to Applicant’s “base fabric layer” and “patterned fabric layer”. The web, or “fabric band”, will be flexible because it is capable of doubling over as shown in Figure 12. It has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Therefore, the limitation “adapted to closely conform to an edge bead of a mattress” is not given any patentable weight at this time.

As to claims 2 - 6, Deignan teaches a filling yarn 100 that traverses the entire web. See Figure 13. Deignan notes that additional filling yarns can be added to the web to increase the strength and rigidity of the web (column 8, lines 50 – 55). Deignan teaches that the needles associated with front and back filling yarns can move in opposite directions, or in the same direction, as desired, depending upon the type of pattern necessitated by the application (column 6, lines 55 – 60). The front and back filling yarns will form the Applicant’s “technical back” and “technical face”.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deignan et al. (US 5,768,758).

Deignan teaches that a pattern can be made with the filling yarns except fails to disclose that the pattern is a diamond pattern. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create the web, or “fabric band”, with a diamond pattern since it has been held to be within the general skill of a worker in the art to select a known pattern on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. In the present invention, one would have been motivated to create the web, or “fabric band”, with a diamond shaped pattern to create an aesthetically pleasing material.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1 – 7 have been considered but are moot in view of the new ground(s) of rejection.

TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 703-305-7082. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*Jennifer Boyd*  
Jennifer Boyd  
December 10, 2003

*T. Morris*  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700